IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5908 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAVDA AMITKUMAR DINESHBHAI

Versus

A.U. PATEL VICE CHANCELLOR

Appearance:

1. Special Civil Application No. 5908 of 2004

MS PRERANA A PANDEY for Petitioner No. 1-5

MRS VD NANAVATI for Respondent No. 1 & 2

Mr.Mihir Joshi for Respondent No. 3 & 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 01/07/2004

ORAL JUDGEMENT

The short facts of the case are that the petitioners are the students who had to appear in TYBA

Examination to be conducted by the University at the college of the respondent No.3. It is the case of the petitioners that as per the programme declared by the University for conducting examination, copy whereof is produced at annexure "B" the examination of paper IX was scheduled on 29.4.04 and for paper X was scheduled on 30.4.04. As per the pattern of college paper IX would be of Experimental Psychology and the paper X would be of Psychology of Sex & Married Life. It is the case of the petitioners that on 29.4.04 in the notification it was mentioned that there will be holiday for the students of Psychology and therefore the students including the petitioners herein considered that the examination of paper IX, i.e. Experimental Psychology will be held on 3.5.04 and they prepared themselves for paper X of Psychology of Sex & Married Life as if to be held on 30.4.04. However, when they entered the examination hall and when the question papers were distributed they came to know that the examination is not of Psychology of Sex & Married Life but is of Experimental Psychology. As the students had not prepared themselves for the subject of Experimental Psychology, they made representation to the college authority and the officers of the University were not ready to consider their representation and as a result thereof all the 56 students had to walk out from the examination hall on 30.4.04 and they subsequently appeared on 3.5.04 in the subject of Psychology of Sex & Married Life. It is the case of the petitioners that since on 30.4.04 they could not appear, their absence may be marked by the University in the result and apprehending the same with a view to have re-conducting of examination of the subject of Experimental Psychology, the petitioners have also made representation on 30.4.04 copy whereof is produced at annexure D to the Vice Chancellor of the University. However, no action is taken by the Vice Chancellor and the petitioners have approached this court praying for direction to the University to reschedule the examination of Experimental Psychology paper.

2. I have heard Ms.Prerana Pandey for the petitioners, Mr.Mihir Joshi for respondent Nos 3 & 4 and Ms.Nanavaty for respondent Nos 1 & 2. The Ld.counsel appearing for the petitioners submitted that because of bonafide mistake as per the students, such complications have arisen and she also submitted that the students were carried away by the pattern of the college, namely Paper IX related to Experimental Psychology and Paper X related to Psychology of Sex & Married Life and as by hand writing in the schedule of examination of 29.4.2004 it was mentioned that there will be holiday for students of

Psychology, they bonafide believed that for paper IX, i.e. Experimental Psychology the examination will be held on 3.5.04 and for the examination of paper X, they appeared themselves on 30.4.04 for the subject of Psychology of Sex & Married Life. She submitted as the matter is pertaining to the career of 56 students of T.Y.B.A, it would be expected of the University to consider the matter for reconduction the examination of subject of Experimental Psychology. She also submitted that as such the students were not at fault and had it been properly notified, the students would have appeared in the said subject also. It has been submitted on behalf of the petitioners that since the Vice Chancellor of the University has not taken any action the petitioners have approached this court.

3. On behalf of the college authorities, Mr.Joshi submitted that the college notified the programme as it is issued by the University wherein it was mentioned that 29.4.04 is holiday for the students of Psychology because it was the subject of Industrial Psychology in which the college is not imparting education. However, he submitted that it is true that as per the last year pattern of the college, paper IX related to Experimental Psychology and paper X related to Psychology of Sex & Married Life. He submitted that in case the University decides to hold the examination for the students in the subject of Experimental Psychology the College is ready to incur the expenses for such purpose as the University may not be required to bear the burden keeping in view the career of all 56 students.

4. On behalf of the University, Ms.Nanavaty submitted that since it was a TYBA examination, the Univeristy had conducted. She submitted that such complications have arisen only in the respondent No.3 college and the other students of the University appearing in TYBA examination have carefully understood the examination schedule and have prepared themselves. She also submitted that as such the result of TYBA is already declared but in respect of the 5 students result is not declared because the matter is pending before the court. However, she submitted that the result of the students is declared but the same shall be subject to outcome of the petition. She submitted that such students who waked out from the examination hall, can not assert as a right to hold reexamination of the subject, but she was candid in admitting that the Vice Chancellor has such power in case he is satisfied that it is a case for ordering conducting of reexamination or reschedulement of the examination for the students

concerned of the respondent No.3 college.

5. Considering the above, it appears that the pattern of paper IX in the college is of Experimental Psychology and paper X is of Psychology of Sex & Married Life. Since there appears to be some bonafide mistake on the part of the petitioner-students in not properly understanding the schedule of examination as notified by the University, the students were carried away by the pattern of college of papers IX and X. Had the students intended to boycott the examination, they would not have appeared on 3.5.04 after understanding accordingly at the scheduled examination for the paper of Psychology of Sex & Married Life.

6. It is true that normally this court would not substitute its own reasons in the field of education and the court while exercising power under Article 226 of the Constitution would leave the questions at large to be decided by the academicians who are experts in the field but at the same time if some proper case is made out of genuine error without there being any bad intention on the part of the students concerned and if it is a matter relating to large number of students, which in the present case relates to the students of respondent No.3 college, the court may exercise power and direct the competent authority to consider the issue sympathetically with a view to see that the career of the students is not put to jeopardy and attempts are made even on the part of academicians to take care of the career of the students without sacrificing the standard of merit in the field of education. It may be stated that as per section 11 of the Gujarat University Act, 1949(hereinafter referred to as "the Act") the Vice Chancellor of the University has power to take action if, in his opinion or he finds that it is necessary for such purpose. It may be that in a given case the Vice Chancellor may consult other body of the University, may be, Executive Council or the Academic Council but, at the same time, in case of emergency there is a scope for Vice Chancellor to consider the matter and to exercise power if ultiamtely he is satisfied that reschedulement of the examination is required or can be ordered keeping in view the bonafide mistake on the part of the students and keeping in view the larger interest of protecting the career of the students in general.

7. It does appear that so far as the University or the Vice Chancellor is concerned, the matter is uptil now not considered and therefore considering the facts and circumstances of the case, and the observations made hereinabove, I find that it would be just and proper if

the Vice Chancellor of the University is directed to consider the issue of reconduction of the examination of the subject in question. It may also be incidentally mentioned that in the affidavit of the university, by the in-charge Registrar of the University, at para 2 it has been stated as under:

"I also respectfully submit that the examination of 3rd year B.A.Psychology consists of six papers of 70 marks each and 30 marks is allotted to internal examination for each paper. Out of 70 marks for external examination for each paper, a student has to obtain 25 marks and out of 30 marks for internal examination a student has to obtain minimum 11 marks to be declared as passed. Apart from the above, a student has to obtain an aggregate of 151 marks in the external examination. Even though the petitioners are given "O" marks in paper of Experimental Psychology, a student may clear the examination."

The aforesaid statement made in the affidavit show that even if the student concerned is getting "O" marks in the subject of Experimental Psychology, on the basis of aggregate marks, the student may clear the examination. Ultimately, it will be for the Vice Chancellor of the University to examine the matter also keeping in view the aforesaid statement made in the affidavit in reply filed by the University and to take appropriate decision keeping in view the career of the students in general without sacrificing the merit and standard of education.

8. In view of the above, I find that the following directions shall meet with the ends of justice:

(i) The respondent No.1, i.e. Vice Chancellor of the University is directed to consider the issue as to whether the re-conducting of the examination of the subject in question should be ordered or not at the costs of the college authorities and while considering the same, the observations made hereinabove by this court shall also be taken into consideration. The Vice Chancellor shall take appropriate decision within a period of two weeks from the date of receipt of writ of this court.

9. The petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. In view of the facts and circumstances of the case, there shall be no costs.

1.7.04 (JAYANT PATEL,J)